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DEALING WITH SEXUAL ASSAULT,
CHALLENGES, AND INSIGHTS

by

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Biography

Colonel Daryl Hood is a native of Athens, Georgia. In 1985, he enlisted as an active duty soldier. In 1989, he served in the U.S. Army Reserve and joined the Simultaneous Membership Program as part of the Army Reserve Officer Training Corps Program at the University of Georgia. He graduated in December 1991 with a Bachelors of Science Degree in Agriculture Technology Management and was commissioned on active duty as a Chemical Officer. Colonel Hood is a graduate of the Chemical Officer Basic and Advanced Courses at Fort McClellan, Alabama and the Command and General Staff College at Fort Leavenworth, Kansas. Additionally, he earned a Master of Arts Degree in Human Resources Development from Webster University, St. Louis, Missouri.

Colonel Hood's most recent duty assignment was as the Deputy Commander, 3rd Chemical Brigade at Fort Leonard Wood, Missouri. He has held numerous leadership and staff officer assignments throughout his career. His former leadership assignments consist of platoon leader, company commander, and battalion commander. His staff assignments comprise of chemical officer, safety officer, operations officer, and executive officer, serving at battalion, brigade, regimental, and division level. He also served joint time with the U.S. Central Command. Colonel Hood has served overseas assignments in Germany (1985), Korea (1994 and 2004), and operational deployments for Operation Joint Guard in Bosnia-Herzegovina (1997) and Operation Enduring Freedom in Afghanistan (2007 and 2010).

Abstract

The numbers of sexual assault cases continue to rise. This increase reveals that it is prevalent in the military. The background and scope of the sexual assault problem starts with the American culture. Perpetrators reside in society – communities, businesses, churches, schools, and sports – and in the military. In an all-voluntary military, the Armed Services are a reflection of culture and society. Despite a socialized training effort to transition civilians to mission ready Soldiers, Sailors, Airmen, and Marines through initial entry training, Service Members, at times, exercise extreme poor judgment and ignore values for the sake of self-motivating reasons that lead to sexual assault. There is ongoing debate in Congress over whether the military justice system should change, primarily due to public scrutiny on how senior military commanders handle sexual assault cases. With sexual assault crimes rising across the entire spectrum of American society and with the spotlight on the Armed Services, accountability remains a huge concern until this crime is reduced and eventually eliminated. Leaders at every level must be held accountable to tackle this challenge. This Professional Studies Paper (PSP) examines the impact of culture, leadership, and policy as they relate to sexual assault in society and in the military. This PSP ends with two recommendations for the Department of Defense (DoD) to consider as a means to assist in deterrence, and concludes with the assertion that the DoD may see Congress take civilian control of the military justice system if the numbers of victims continue to rise.

It is up to all of us to ensure victims of sexual violence are not left to face these trials alone. Too often, survivors suffer in silence, fearing retribution, lack of support, or that the criminal justice system will fail to bring the perpetrator to justice. We must do more to raise awareness about the realities of sexual assault; confront and change insensitive attitudes wherever they persist; enhance training and education in the criminal justice system; and expand access to critical health, legal, and protection services for survivors.¹

– President Barack Obama, April 2012

We still have people out there who tolerate sexual assault....You have to do what is right. You have to hold people accountable for their actions. That's the only way you are going to fix a problem.²

*– General Ray Odierno, Army Chief of Staff,
13 June 2013*

Introduction

The Army, Navy, Marines, and Air Force, reported 3,192 sexual assault cases to the Department of Defense (DoD) in Fiscal Year 2011 (FY11)³ and 3,374 in FY12.⁴ The number increased to 5,061 in FY13.⁵ These numbers reveal that it is endemic in the military. The term sexual assault refers to:

Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific [Uniform Code of Military Justice] UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.⁶

Anyone can be the perpetrator or victim,⁷ regardless of gender, age, race, education level, income status, job title, or military position.

From junior rank to more senior, enlisted and officers, service members unfortunately commit sexual assault or sexual misconduct crimes, which clearly violate America's trust and confidence in its military. In a *Fox News* article, "For top officers, the numbers are startling.... generals and admirals, from one star to four stars, were fired in recent years, and 10 of them lost

their jobs because of sex-related offenses”⁸ The media featured stories on a Marine Corps 4-star general and two Army 1-star generals.⁹ Other stories highlighted two Air Force officers for sexual crimes. One lieutenant colonel obtained a conviction for rape.¹⁰ A different lieutenant colonel received jail time for sexual assault.¹¹ In addition to these violations, there were other examples, such as the Air Force 2009 Basic Training incident at Joint Base Lackland-San Antonio,¹² the Navy’s 1992 Tailhook scandal at the Las Vegas Hilton¹³ and the Army’s 1996 Aberdeen Proving Ground impropriety. Undoubtedly, sexual assault in the Armed Services remains a serious problem, despite significant resources and attention that DoD directs toward solving this issue.

Thesis

This Professional Studies Paper (PSP) examines the impact of culture, leadership, and policy, as they relate to sexual assault in society and in the military. These three factors influence the services’ approach to sexual assault and present some challenges to overcoming the problem. This PSP provides insights on cultural, leadership, and policy challenges to reducing sexual assault in the military, and offers DoD two recommendations: one, instill sexual assault training as part of the leader development strategy to reinforce professionalism throughout Service Members’ careers; and two, standardize command climate survey timelines to improve commanders’ awareness.

Underlying Challenges with Sexual Assault

A Reflection of Culture

The background and scope of the sexual assault problem starts with the American culture. Perpetrators reside in society – communities, businesses, churches, schools, and sports – and in the military. In an all-voluntary military, the Armed Services are a reflection of culture and

society. As David Crary expressed, “Sexual assault occurs in myriad settings and the perpetrators come from every swath of U.S. society.”¹⁴ The Department of Justice (DoJ) National Crime Victimization Survey (NCVS) report listed 244,190 rape and sexual assault incidents for 2011 and 346,830 for 2012 across American society (shown below in Table 1);¹⁵ unreported incidents account for the increase.

Violent victimization, by type of violent crime, 2003, 2011, and 2012

Type of crime	Number			Rate ^a		
	2003	2011	2012	2003	2011	2012
Violent crime^b	7,679,050	5,812,520	6,842,590 †	32.1	22.6	26.1 †
Rape/sexual assault	325,310	244,190	346,830	1.4	0.9	1.3
Robbery	708,380	557,260	741,760 ‡	3.0	2.2	2.8 ‡
Assault	6,645,360	5,011,080	5,754,010 ‡	27.8	19.5	22.0
Aggravated assault	1,362,270	1,053,390	996,110	5.7	4.1	3.8
Simple assault	5,283,100	3,957,690	4,757,900 †	22.1	15.4	18.2 †
Domestic violence ^c	1,480,920	1,354,910	1,259,390	6.2	5.3	4.8
Intimate partner violence ^d	1,040,290	850,770	810,790	4.3	3.3	3.1
Violent crime involving injury	2,029,200	1,450,650	1,573,460	8.5	5.6	6.0
Serious violent crime^e	2,395,950	1,854,840	2,084,690	10.0	7.2	8.0
Serious domestic violence ^c	650,650	369,040	411,080	2.7	1.4	1.6
Serious intimate partner violence ^d	498,470	262,660	270,240	2.1	1.0	1.0
Serious violent crime involving weapons	1,695,680	1,194,420	1,415,120	7.1	4.6	5.4
Serious violent crime involving injury	953,740	689,810	762,170	4.0	2.7	2.9

Note: Detail may not sum to total due to rounding. Total population age 12 or older was 239,305,990 in 2003; 257,542,240 in 2011; and 261,996,320 in 2012. See appendix table 2 for standard errors.

† Significant change from 2011 to 2012 at 95% confidence level.

‡ Significant change from 2011 to 2012 at 90% confidence level.

^aPer 1,000 persons age 12 or older.

^bIncludes rape or sexual assault, robbery, aggravated assault, and simple assault.

^cIncludes victimization committed by intimate partners (current or former spouses, boyfriends, or girlfriends) and family members.

^dIncludes victimization committed by current or former spouses, boyfriends, or girlfriends.

^eIncludes rape or sexual assault, robbery, and aggravated assault.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2003, 2011, and 2012.

Table 1

Considering DoD’s 3,374 reported cases for 2012, when given the total U.S. population of 308,745,538,¹⁶ sexual assault incidents were less than one percentage point for both society (0.112) and the military (0.092). DoD’s total force structure of 3,652,086 military personnel is approximately one percent (1.18%) of U.S. total population.¹⁷ Regardless of the low percentage point, DoJ and DoD victim numbers remain too high; therefore, the numbers indicate sexual assault is a problem in society for *civilians and military professionals*.

Despite a socialized training effort – civilian volunteers transform into mission ready Soldiers, Sailors, Airmen, and Marines through initial entry training – within the military culture,

Service Members exercise poor judgment at times and ignore values that lead to sexual assault. Why does this happen? Do perpetrators commit these horrendous acts because of temptation, for sexual gratification, or is it closer to the truth to say that: “The underlying factors in many sexually violent acts are power and control?”¹⁸ In response to such atrocious acts, leaders must take appropriate action.

Leadership Must be Held Accountable

What is DoD doing about sexual assault in the military culture? As directed by the Secretary of Defense (SECDEF), DoD uses the Sexual Assault Prevention and Response (SAPR) Strategic Plan to focus on compliance across the Service Departments, including: “Prevention, Investigation, Accountability, Advocacy/Victim Assistance, and Assessment.”¹⁹ Questions that need answers to support this effort are: Who is holding DoD responsible to achieve results? Does the U.S. Constitution give Congress authority over the Armed Services? How does Congress expect senior military leaders to protect service members from sexual assault perpetrators? Answers to these questions may be easier said than done, especially considering the prevalent sexual assault numbers. The simple answer is Congress has oversight authority and insists the military’s leadership take responsibility to resolve this issue. A number of Congressional hearings and adjudication of bills through the House of Representatives and Senate were passed to exert stricter control measures on the military.

Like Congress, the President and the Administration remain committed to tackling this problem in society and in the military. President Obama signed the Senate (S.47) Bill, “*Violence Against Women Reauthorization Act of 2013*,” to take action against all perpetrators.²⁰ Congress established a federal law under the FY11 National Defense Authorization Act (NDAA), Section 1631 of Public Law 111-383 that requires the SECDEF to submit annual reports of sexual assault

analysis to “the Committees on Armed Services.”²¹ The cliché, “Actions speak louder than words,” not only mirrors the President’s and the Administration’s guidance, but it indicates accountability rests on the shoulders of DoD and the Armed Services.

With sexual assault crimes increasing for American society and a spotlight on the military, accountability remains a huge concern for Congress until this crime is significantly reduced and eventually eliminated. As highlighted in this paper’s introduction, senior military officers’ sexual misconduct ran amuck which led to their dismissal. Statistics show that “at least 30 percent of military commanders fired over the past eight years lost their jobs because of sexually related offenses.”²² Clearly, recent military leaders, as perpetrators, have been part of DoD’s problem.

Another challenge with sexual assault centers on victim reporting. According to the Criminal Victimization 2012 Report, “Victims may not report the victimization for a variety of reasons, such as fear of reprisal or getting the offender in trouble, believing that police would not or could not do anything to help, and believing the crime to be a personal issue or trivial.”²³ Evidence from the 2012 Academy Award winning documentary *Invisible War* featured male and female victims who shared their personal stories of suffering from sexual assault. The filmmakers contacted five female Marines who were assaulted by officers while serving at Marine Barracks in Washington, D.C. Four of the women were investigated or punished after they reported. No officer was punished for any assault.²⁴ These types of occurrences substantiate the importance of responsibility, and reinforce why military leaders must be held accountable.

Policy – the Public and Congress Question the Military Justice System

DoD Directive (DoDD) 6495.01 sets the broad policy for Sexual Assault Prevention and Response (SAPR). Each subordinate department provides more specific directives and standards

for its respective Service Members. However, debate continues over whether the military justice system should change, primarily due to public scrutiny on how senior military commanders handle sexual assault cases. This was certainly the situation regarding the Wilkerson case. An Air Force senior commander (3-star general) overturned a sexual assault conviction of an accused Air Force lieutenant colonel. To make matters worse, the accused officer, who received clemency, then was blamed by another woman for “committing adultery and fathering a child out of wedlock years earlier. The Air Force confirmed the allegation and forced [the lieutenant colonel] to retire.”²⁵ As the policy debate continues, Legislative Attorney R. Chuck Mason from the Congressional Research Service (CRS) made the following comment:

Recent high-profile military-related cases involving sexual assaults by U.S. service members have resulted in increased public and congressional interest in military discipline and the military justice system. Questions have been raised regarding how allegations of sexual assault are addressed by the chain of command, the authority and process to convene a court-martial, and the ability of the convening authority to provide clemency to a service member convicted of an offense.²⁶

The Wilkerson case exasperated a number of Congressmen. Senator (D-N.Y.) Kirsten Gaillibrand stated, “There is no accountability.... Because the trust that any justice will be served has been irreparably broken under the current system, where commanders hold all the cards over whether a case moves forward for prosecution.”²⁷ Once again, Congress has reason for concern with how military senior leaders handle sexual assault cases. The problem is twofold: leadership accountability to prevent sexual assault and commanders’ responsibility to prosecute perpetrators in accordance with the law.

Synthesis – Insights on the Analysis of the Sexual Assault Problem

Culture – Analyzing the Problem in Society

Examining sexual assault involves complexity because victim reporting varies, survey methodology alters, and the advocacy system differs amongst the health, legal, and protection services. According to Women Organized Against Rape (WOAR), “It is difficult to estimate the numbers of people who have been sexually violated because many people [the victims] do not report being assaulted and research studies use different methods to survey people [the victims].”²⁸ With respect to research studies using different methods, the National Research Council (NRC) stated, “There are two quite different perspectives for the measurement of rape and sexual assault—the criminal justice perspective and the public health perspective. These different perspectives have led to methodological differences in designing and implementing surveys, which, in turn, have resulted in different estimates of the incidence rates.”²⁹ NRC worked with the Justice Department’s Bureau of Justice Statistics (BJS) to improve its National Crime Victimization Survey (NCVS) methods. NRC identified best practices and made recommendations to BJS, such as revising terminology to capture the best word description and tweaking questionnaires and protocols to structure questions better. Perhaps the most notable suggestion was for NCVS to develop two independent surveys to separate rape and sexual assault from robbery, aggravated and simple assault.³⁰

To gain a perspective of the social complexity of sexual violence, look below at the breakdown of the problem across American culture according to the *White House Council on Women and Girls Rape and Sexual Assault: A Renewed Call to Action* report:

- **Women and girls are the vast majority of victims:** nearly 1 in 5 women – or nearly 22 million – have been raped in their lifetimes.
- **Men and boys, however, are also at risk:** 1 in 71 men – or almost 1.6 million – have been raped during their lives.
- **Women of all races are targeted, but some are more vulnerable than others:**

33.5% of multiracial women have been raped, as have 27% of American Indian and Alaska Native women, compared to 15% of Hispanic, 22% of Black, and 19% of White women.

- **Most victims know their assailants.**
- **The vast majority (nearly 98%) of perpetrators are male.**
- **Young people are especially at risk:** nearly half of female survivors were raped before they were 18, and over one-quarter of male survivors were raped before they were 10. College students are particularly vulnerable: 1 in 5 women has been sexually assaulted while in college.
- **Repeat victimization is common:** over a third of women who were raped as minors were also raped as adults.³¹

This data consisted of surveys performed by other government agencies and departments.

The Center for Disease Control (CDC) sponsored a survey conducted by the National Intimate Partner and Sexual Violence Survey (NISVS). The NISVS study revealed 80% of women were raped before the age of 25 and approximately 50% before turning 18. In a different study, funded by the National Institute of Justice (NIJ), scholars at the Research Triangle Institute, International (RTI) disclosed 58% of college women experienced sexual assault while incapacitated (under the influence of alcohol or drugs) and 28% of rapes occurred at a party. College campus sexual assault victims reported an average of 12% to law enforcement.³² Regardless of who conducts the survey and how they do it (methodology), the data correlates and proves sexual assault is a problem in society. After reviewing the data, the Office of the Vice President understands the magnitude of the problem and knows the potential for victim numbers to be higher based on victim reporting. NCVS, NISVS, and RTI reports, surveys and analysis explain why sexual assault has the attention of the President and the Administration.

Leadership – Examining the Problem in the Armed Services

Analyzing military sexual assault is perplexing because of the communal dynamics associated with culture. Statistical evidence specified by DoD sources depicts this point. Moreover, victim reporting coupled with survey method, advocacy and assistance services

(health, legal, and protective) present different perspectives which impact individual and collective observations.

DoD uses a variety of sources to gather its sexual assault data, such as the Defense Sexual Assault Incident Database (DSAID), Defense Equal Opportunity Management Institute (DEOMI) Organizational Climate Survey (called the DEOCS), Defense Manpower Data Center's (DMDC) Workplace and Gender Relations Survey (WGR), Military Criminal Investigative Organization (MCIO), and reports of trial and military justice data sources.³³ DMDC conducts the WGR of Active Duty Members (WGRA) to assess prevalence of sexual assault during the past 12 months. Congress mandates the WGRA under U.S. Code Title 10. DMDC will complete the biannual WGRA for 2014 analysis and release the results in April 2015.³⁴ The last WGRA conducted was for 2012, and previously for 1995, 2002, 2006, and 2010 respectively. The 2012 WGRA survey was done electronically based on 22,792 eligible respondents from a sample of 108,478 active duty members, which measured "unwanted sexual contact [meaning] intentional sexual contact that was against a person's will..."³⁵ The 2012 survey results disclosed 6.1% of women compared to 1.2% of men who indicated unwanted sexual contact (USC). Listed below is Table 2, showing the 2012 percentage increased from the 2010 rate, although the 2012 assessment was close to the 2006 rate.³⁶

Unwanted Sexual Contact		
2006	2010	2012
Women: 6.8%	Women: 4.4%	Women: 6.1%
Men: 1.8%	Men: 0.9%	Men: 1.2%

Table 2

Despite the methodology used by DoD, there is debate about the reliability and validity of the WGRA data. Rowan Scarborough, who spent two decades with *The Washington Times*, reported there is doubt about the military's survey results compared to the Justice Department's numbers that are much lower than DoD statistics. The Pentagon gave a statement declaring that

DoD and DoJ compare different information: “When surveys examine all age ranges, the average prevalence is lower than if you just look at certain segments of society. When you look at the military — which is a segment of society — it has higher rates of prevalence than society on average as a whole.”³⁷ Furthermore, the Congressional directed *Report of the Response Systems to Adult Sexual Assault Crimes Panel* (RSP) reiterates military sexual assault results “are not comparable because of systemic differences [in] definitions, procedures, and criteria throughout the process.”³⁸ Indeed, there are distinctions between civilian and military survey data. The implication is that the methodology, analysis, and recommendations are likely to be misleading due to systemic differences based on directives, regulations, and procedures.

For sexual assault reporting, victims exercise one of two types, unrestricted and restricted. DoD prefers unrestricted reporting. With unrestricted reporting, victims have access to the Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response (SAPR) Victim Advocate (VA), medical treatment, professional counseling, chain of command, and law enforcement to generate an official investigation through the victim’s reporting channels. For restricted reporting, victims confidentially disclose the assault only to the SARC, SAPR VA, and health care provider, without activating an official investigation. “Given the victim’s desire for confidentiality, these reports are not investigated and victims are not required to provide many details about these sexual assaults. As a result, only data about the victim and the offense are recorded. Alleged subject identities in [r]estricted [r]eports are not requested or maintained by the Department.”³⁹ Of DoD’s 5,061 cases, there were 3,768 (74%) unrestricted reports and 1,293 (26%) restricted reports in FY 13.⁴⁰ What do these percentages indicate? 74% of the victims demonstrated extraordinary courage to follow unrestricted reporting protocols to trigger an investigation against alleged perpetrators. And 26% of the victims chose restricted

reporting, for whatever reason, which did not generate an investigation. Why do reporting types vary? It varies due to trauma, fear of retaliation, and lack of support from the chain of command, especially if the perpetrators are from within the ranks. The victims in the *Invisible War* documentary paint a vivid image of the trepidation encountered throughout the ordeal.

Sexual assault traumatizes victims which affect when they decide to report or if they report at all. Research indicates that victims tend to suffer psychologically. To illustrate this point, the author uses two sources that are particularly insightful. First, according to *The White House Council on Women and Girls* report, “the trauma that often accompanies a sexual assault can leave a victim’s memory and verbal skills impaired – and without trauma-sensitive interviewing techniques, a [person’s] initial account can sometimes seem fragmented.... [Health problems comprise of] depression, chronic pain, diabetes, anxiety, eating disorders, and post-traumatic stress disorder.”⁴¹ Secondly, the National Center for Posttraumatic Stress Disorders (PTSD) insists that, “PTSD is the most common mental health condition observed among Veterans who report military sexual trauma (MST).”⁴² Regardless of these claims, critics may still question the severity of MST and its effect on victim reporting. When it comes to the topic of trauma, Paula Caplan, PhD, who is a clinical and research psychologist, declares that, “Some consequences of MST come from the assaults themselves, and others come from the further anguish, even trauma, that results from the way reports of the assaults are—and are not—handled.”⁴³ Pundits or other readers may debate that trauma is more subjective than objective, and that it is difficult to diagnose or measure. As an Army colonel with 29 years of experience amongst different service members, the author wholeheartedly endorses these findings.

Further examination of the military’s leadership problem with sexual assault requires a look from within the ranks. U.S. Code Title 10 prescribes the regulation

governing each subordinate service, which provides specific guidelines for commanders and the chain of command. Officers and non-commissioned officers are supposed to take care of their subordinates. For example, “All commanding officers and others in authority in the Army are required.... To promote and safeguard the morale, the physical [w]ell-being, and the general welfare of the officers and enlisted persons under their command or charge.”⁴⁴ DoD’s FY 13 annual report findings illuminate the percentages for perpetrators categorized by pay grade (see Table 3). For commissioned officers, the results were 5% for O1 to O3 and 2% for O4 to O10, totaling to 7%. For non-commissioned officers, the percentage was even higher at 34%.⁴⁵

Alleged Subjects (Perpetrators)	
Pay Grade	Percent
E1 – E4	56%
E5 – E9	34%
WO1 – WO5	1%
Cadet/Midshipman	1%
O1 – O3	5%
O4 – O10	2%
Unknown	1%

Table 3: Unrestricted Reporting – Subject Data

After synthesizing this data, it is no wonder victims are traumatized, especially when the perpetrators are from within the ranks. Sexual assault “threaten[s] to undermine the structural foundation of the [military and the trust of its leaders].... Violation of this special trust and responsibility erodes the American public’s confidence in the military...and embeds sexual [assault] within the [military].”⁴⁶ Regardless of pay grade and position within the chain of command, all Service Members, especially commanders, have a responsibility to comply with applicable laws and regulations, and to take action against individuals who violate them by using the military justice system.

Policy – Analyzing the Military Justice System

DoD statistics show 62% of perpetrators received a courts-martial conviction in FY11,⁴⁷ 68% in FY12,⁴⁸ and 71% in FY13.⁴⁹ Although these percentages reflect increased convictions inside the military justice system, perception exists regarding alleged perpetrators that were not incarcerated. Why is this? Of the 1,187 reported cases in FY13, 838 perpetrators (71%) received courts-martial while 210 alleged perpetrators (18%) were processed for nonjudicial punishment (Article 15, UCMJ) and 139 perpetrators (12%) received a discharge or other type of adverse administrative action. In essence, the official investigation found the sexual assault charge unsubstantiated for the remaining alleged perpetrators (29%). As a result, perception prevails concerning the unsubstantiated charges, or one assumes the commander went easy on the alleged perpetrator and hence the lighter punishment. “Evidence supported command action for misconduct discovered during the sexual assault investigation (such as making a false official statement, adultery, underage drinking, or other crimes under the UCMJ).”⁵⁰

This kind of perception fuels the debate on whether jurisprudence should rest with the civilian or military courts to prosecute sexual assault cases. DoD came under fire last year because of the influx of FY13 statistics. The survey data alone did not inflame Congress. The increased FY13 numbers certainly drew attention, but the cumulative effect of ongoing sexual assault cases ignited Congress which led to reform. Particularly Congress was pushing for change that included: general officers as the convening authority (CA) due to the implication concerning clemency (akin to the Air Force’s Wilkerson case), and the victim assistance efforts highlighted in the *Invisible War* documentary and human rights organization like Protect Our Defenders. The result of the Congressional reform was the National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA): “Congress enacted several provisions limiting convening authority discretion. For example, Congress substantially reduced convening authorities’

formerly unlimited discretion to grant clemency to Service [M]embers convicted of crimes under the UCMJ.”⁵¹ Charles D. Stimson, senior legal fellow at The Heritage Foundation, explained, this reform removes commanders’ “ability to modify sentences for serious offenses by overturning a guilty verdict or reducing the finding of guilty to that of a lesser included offense.”⁵² Nevertheless, Congress has insisted on more reform.

In 2013, the House and Senate Committees introduced bills to enhance prevention efforts, notably on whether civilian law or military should have jurisprudence over CA. Senator Kirsten Gillibrand (D-N.Y.) sponsored the Military Justice Improvement Act (MJIA). She tried twice to get MJIA bills (S.967 and S.1752) passed, but both stalled in Congress.⁵³ Senator Claire McCaskill (D-MO) sponsored S.1917 – Victims Protection Act (VPA) of 2014 which passed legislature on 10 March 2014.⁵⁴ Senator Gillibrand argued for the MJIA and Senator McCaskill advocated for the VPA. The main difference between the MJIA and VPA addressed CA disposition. The CA, a commander, determines if a complaint goes to trial. The MJIA advocated moving CA from the victim’s unit commander into a third party military prosecutor “outside the involved parties’ chain of command.”⁵⁵ Senator Gillibrand and human rights groups claim leaving CA in the hands of commanders is risk averse and opens the bias door based on self-preservation tendencies of the commander or from others within the ranks to cover up the assault. Senator McCaskill took the opposite approach: CA stays with commanders instead of prosecutors. As recently as April 26, 2014, an article in Harvard Politics emphasizes that:

‘the evidence does not support a conclusion that removing authority [recommended by Senator Gillibrand] to convene courts-martial from senior commanders will reduce the incidence of sexual assault or increase reporting of sexual assaults in the Armed Forces’....VPA merely strengthens prosecutors’ role in advising commanders in their convening decisions.⁵⁶

It will be compelling to see if Senator Gillibrand petitions for a third time.

Recommendations

To assist in reducing sexual assault, this PSP offers DoD two suggestions for consideration: one addresses leader development strategy and the other deals with organizational climate surveys. The *Report of the Response Systems to Adult Sexual Assault Crimes Panel* conducted a thorough 12 month assessment of how effective the military “investigate[d], prosecute[d], and adjudicate[d]” adult sexual assault crimes.⁵⁷ The panel’s report provided 132 recommendations, but it does not include the two presented here.

Recommendation One: *Direct the military services to inculcate sexual assault training as part of a leader development strategy.* The Army Leader Development Strategy 2013 outlines a construct focused on the institutional Army (education or training institution), the operational force (organization or unit), and the individual. This concept is further defined in the Army Leader Development Model; it encompasses Soldiers and Army Civilians using their training, education, and experience in the framework of the institutional domain, operational domain, and self-development domain.⁵⁸ The Navy has a similar strategy for its Sailors. The Marine Corps and Air Force currently do not have such a strategy; however, both have professional development programs for Marines and Airmen respectively. A leader development strategy reinforces sexual assault standards that start upon initial military training and continues throughout the education process and experience gained during one’s professional career.

Recommendation Two: *Standardize organizational command climate survey (CCS) intervals for all services and require commanders to brief raters from their higher headquarters.*

Services direct commanders, of diverse levels and ranks, to conduct the CCS at different time intervals. The Army requires company level commanders to conduct a survey in the first 30 days of assuming command, another CCS six months later, and then 12 months later;

commanders above company level conduct an initial CCS within 60 days of assuming command and 12 months later.⁵⁹ The Navy instructs an initial CCS in the first 90 days and annually thereafter for commanders (rank not stated);⁶⁰ the Marine Corps orders an initial CCS in the first 30 days and then annually for lieutenant colonel and colonel level commanders;⁶¹ the Air Force instructs an initial CCS in the first 120 days and then annually for commanders (rank not stated).⁶² The Army model, as a proposal, with different levels of command and time intervals,⁶³ should be adopted by all the Services. The early survey helps commanders to be more aware of potential problem areas that could impede unit readiness. When a survey is taken within thirty days of assuming command, it provides the commander an opportunity to understand and quickly addresses potential issues, and it sends the message that the issues are important.

While services share CCS results with their higher headquarters, commanders present the information in diverse ways – formally and informally. DoD should require commanders to formally brief their raters from their higher headquarters. At a minimum, the briefing to the next higher commander should include the senior enlisted advisor, SARC, SAPR VA, chaplain, and applicable health care professional for their expert advice.

Conclusion

The number of DoD sexual assault cases increased over the last three years. Whether a civilian or a military member, this travesty is prevalent in American culture. Individuals must want to modify their behavior so change occurs. The *White House Council on Women and Girls* report advocates: “Sexual assault is pervasive because our culture still allows it to persist... [Vice President Biden said,] “We are helpless to change the course of this violence unless, and until, we achieve a national consensus that it deserves our profound public outrage.”⁶⁴ The White House, Congress, and DoD remain committed to eliminating the prevalence of sexual assault.

This PSP recognizes the impact of culture, leadership, and policy with respect to society and the military. Research shows that victim reporting and survey methodologies vary which affect the accuracy in tabulating number of cases within society and the military. DoD is collaborating with DoJ and other organizations to improve processes within the Defense Department.

Ultimately, DoD must protect its most precious asset – people. The military must be vigilant in combating sexual assault to provide justice to the victim and to maintain the public’s trust and confidence in order to take care of its *people*. Service Members, especially commanders, must be responsible and accountable to facilitate the change process and to establish a climate that empowers all members to transform. The key to eliminating sexual assault is to have a plan and execute it. The DoD Sexual Assault Prevention and Response Strategic Plan aims at prevention, investigation, accountability, advocacy/victim assistance, and assessment. When Service Members violate trust and commit a sexual assault crime, commanders and the military’s judicial system must prosecute the perpetrator to the full extent of the law. Attorney Susan Burke, from the *Invisible War*, adamantly argues this very point. She truly believes this “would get rid of a lot of the rapes right away.”⁶⁵ This is exactly the approach DoD’s Sexual Assault Prevention and Response Office (SAPRO) is taking. The Director of SAPRO, an Army 2-star, affirms that: “[Victims that step forward make] a courageous choice....To the offenders: We don’t care who you are or what rank you hold. If you don’t understand our core values and are not prepared to live by and enforce those values every day, then we don’t want you in our military.”⁶⁶ The SAPRO director clearly advocates taking a stand. Congress and the American public expect it.

In the military, like society, it takes time to affect change and behavior. How patient will Congress be with DoD? Every Service Member, regardless of rank, must be willing to solve the

sexual assault problem, hopefully sooner rather than later. If not, victim numbers will continue to rise, and DoD may see Congress take civilian control of the military justice system.

End Notes

(All notes appear in shortened form. For full details, see the appropriate entry in the bibliography.)

¹ *The White House Council on Women and Girls*, ii.

² Ferdinando, “Odierno: Unfortunately, Some Still Tolerate Sexual Assault,” *Army News*.

³ *DoD FY 2011 Annual Report on Sexual Assault in the Military*, 2.

⁴ *DoD FY 2012 Annual Report on Sexual Assault in the Military*, 3.

⁵ *DoD FY 2013 Annual Report on Sexual Assault in the Military*, 3.

⁶ DoDD 6495.01. *DoDD Sexual Assault Prevention and Response (SAPR) Program*, 18.

⁷ The terms “victim and survivor” are used to describe individuals who were raped or sexually assaulted. The terms “perpetrator, offender, and subject” refer to the person who conducted the sexual assault crime. The terms are used interchangeably in this paper and with respect for individuals who hurt from this crime, or in the case of the perpetrator who should be punished for the crime.

⁸ “Sexual Misconduct a Major Reason Behind Military Commander Firings,” *Fox News*.

⁹ Jones, “These 14 Senior Officer Screwed Up Big Time,” *Business Insider*.

¹⁰ Montgomery, “Spangdahlem-Based AF Pilot Convicted of Rape,” *Stars and Stripes*. Of note: Lieutenant Colonel Michael J. Briggs was an F-16 pilot and chief of safety for the 52nd Fighter Wing at Spangdahlem Air Base, Germany. At the conclusion of a court-martial, the military judge sentenced him to “five months in jail, dismissal from the Air Force, and a reprimand.”

¹¹ Ackerman, “Air Force Chief of Sexual Assault Prevention Arrested on Sexual Battery Charges,” *Wired*, 1. Of note: Lieutenant Colonel Jeffrey Krusinski, at the time of the conviction, was the chief of the Air Force’s SAPR.

¹² *Ibid.*, 2.

¹³ Winerip, “Revisiting the Military’s Tailhook Scandal,” *The New York Times*.

¹⁴ Crary, “Military’s Sexual-Assault Problem has Deep Roots,” *Yahoo News*.

¹⁵ Truman, Langton, and Planty, *Criminal Victimization, 2012*. Of note: The National Crime Victimization Survey (NCVS) is an annual data collection conducted by the U.S. Census Bureau for the Bureau of Justice Statistics (BJS).

¹⁶U.S. Census Bureau, The 2012 Statistical Abstract, The civilian population was 308,745,538 (found at <http://www.census.gov/compendia/statab/2012/tables/12s0002.pdf>).

¹⁷*DoD 2012 Demographics: Profile of the Military* (2012), iii.

¹⁸“Guidelines for Medico-Legal Care for Victims of Sexual Violence.” *World Health Organization*.

¹⁹DoD FY13 Annual Report on Sexual Assault, 6.

²⁰U.S. Senate, S.47 Bill, *Violence Against Women Reauthorization Act of 2013*.

²¹U.S. House, Public Law 111-383 Section 1631.

²²“Sexual Misconduct a Major Reason Behind Military Commander Firings,” *Fox News*.

²³Truman, Langton, and Planty, *Criminal Victimization*, 2012.

²⁴*Invisible War*, DVD, 2012.

²⁵Whitlock, “Air Force General to Retire After Criticism for Handling of Sexual-Assault Case,” *The Washington Post*.

²⁶Mason, “Sexual Assault Under the Uniform Code of Military Justice.”

²⁷Steinhauer, “Reports of Military Sexual Assault Rise Sharply,” *The New York Times*.

²⁸*Women Organized Against Rape (WOAR)*. Of note, “WOAR is a non-profit organization in Philadelphia, Pennsylvania whose mission is to eliminate all forms of sexual violence through specialized treatment services, comprehensive prevention education programs, and advocacy for the rights of victims of sexual assault.”

²⁹Kruttschnitt, Kalsbeek, and House, National Research Council, *Panel on Measuring Rape and Sexual Assault in Bureau of Justice Statistics Household Surveys*, 2.

³⁰*Ibid.*, 9-14.

³¹*The White House Council on Women and Girls*, 1. Of note, the bold letters is original to the text.

³²*Ibid.*, 10 and 14.

³³*DoD FY13 Annual Report on Sexual Assault*, 60.

³⁴Ibid., 3. Of note: “The WGRA is conducted every two years by the Secretary of Defense, as required by 10 USC section 481. In 2013, the Secretary directed that the 2014 WGRA be conducted by an agency external to the Department. Results of the 2014 WGRA will be reported in the FY14 Annual Report, to be released in April 2015.”

³⁵Workplace and Gender Relations Survey of Active Duty Members 2012, 1-6. Hereafter cited as WGRA 2012 Survey.

³⁶Ibid., 2.

³⁷Scarborough, “Doubts on military’s sex assault as numbers far exceed those for the U.S.,” *Washington Times*.

³⁸*Report of The Response Systems to Adult Sexual Assault Crimes Panel*, 12.

³⁹DoDD 6495.01, 16-18.

⁴⁰*DoD FY13 Annual Report on Sexual Assault*, 62.

⁴¹*The White House Council on Women and Girls*, 2.

⁴²Hyun, Pavao, and Kimerling, “Military Sexual Trauma,” *National Center for Posttraumatic Stress Disorder*, 2.

⁴³Caplan, “Sexual Trauma in the Military: Needed Changes in Policies and Procedures,” *Women’s Policy Journal of Harvard*, 11.

⁴⁴Army Regulation 600-20, “Army Command Policy,” 2. Hereafter cited as AR 600-20.

⁴⁵*DoD FY13 Annual Report on Sexual Assault*, 124.

⁴⁶Gervais, “Violating the Sacred Trust: Sexual Misconduct in Initial Entry Training,” 1.

⁴⁷*DoD FY11 Annual Report on Sexual Assault*, 41.

⁴⁸*DoD FY12 Annual Report on Sexual Assault*, 69.

⁴⁹*DoD FY13 Annual Report on Sexual Assault*, 79.

⁵⁰Ibid., 79.

⁵¹*Report of The Response Systems to Adult Sexual Assault Crimes Panel*, 6.

⁵²Stimson, “Sexual Assault in the Military: Understanding the Problem and How to Fix It.”

⁵³U.S. Senate Arms Services Committee, S.967 Bill, *Military Justice Improvement Act of 2013*. Of note, the MJIA – “amends the Uniform Code of Military Justice (UCMJ), with respect to charges that allege an offense triable by court-martial (with certain exclusions) for which the maximum punishment includes confinement for more than one year, to direct the Secretary of Defense (DOD) to require the Secretaries of the military departments to provide for the determination of whether to try such charges by general or special court-martial to be made by a commissioned officer of grade O-6 or higher with significant experience in such trials and who is outside the chain of command of the accused.” U.S. Senate Arms Services Committee, S.1752 Bill, *Military Justice Improvement Act of 2013*, 20 November 2013, 113th Congress (2013-2014), <https://www.congress.gov/bill/113th-congress/senate-bill/1752?q=%7B%22search%22%3A%5B%22S.1752%22%5D%7D> (accessed 17 October 2014). The MJIA “amends the Uniform Code of Military Justice (UCMJ) to direct the Secretaries of Defense (DOD) and Homeland Security (DHS) to require the Secretaries of the military departments to determine whether to try a covered offense by court-martial in accordance with the requirements and limitations under this Act.”

⁵⁴U.S. Senate Arms Services Committee, S.1917 Bill, *Victims Protection Act of 2014*. Of note, the VPA – “amends the National Defense Authorization Act for Fiscal Year 2014 (NDAA 2014) to revise the sexual assault prevention and response program activities of the Armed Forces.”

⁵⁵Lee, “The Quest for Military Sexual Assault Reform,” *Harvard Politics*, 2.

⁵⁶*Ibid.*, 3.

⁵⁷*Report of The Response Systems to Adult Sexual Assault Crimes Panel*, 11-53.

⁵⁸DA PAM 350-58, *Army Leader Development Program*, 1-2.

⁵⁹McHugh to Department of the Army Commander, memorandum, 23 December 2013.

⁶⁰OPNAV Instruction 5354.1F Change Transmittal 1, Chief of Naval Operations, *Navy Equal Opportunity Policy*.

⁶¹Message, MARADMINS Number: 316/13, Commandant of the Marine Corps, to the Marine Corps Total Force.

⁶²Fanning, Acting Secretary of the Air Force, to Secretary of Defense, memorandum, 28 October 2013.

⁶³The Army’s company level command generally includes officers in the rank of captain (O-3 pay grade level); however, some combat service support career fields entail commanders with the rank of first lieutenant (O-2 pay grade). Above company grade applies to commanders with a rank of major (O-4), lieutenant colonel (O-5), and colonel (O-6).

⁶⁴*The White House Council on Women and Girls*, 33.

⁶⁵*Invisible War*, DVD, 2012.

⁶⁶Simeone, “Hagel: Numbers Reflect Victim Confidence in Reporting Assaults,”
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